ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

AT&T CORP. REPLY TO OPPOSITIONS TO PETITION FOR LIMITED RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby replies to the oppositions to its petition for limited reconsideration and clarification of the Commission's Second Report and Order in CC Docket No. 96-98.[1]

I. THE COMMENTS CONFIRM THAT THE COMMISSION MAY NOT PERMIT NON-BOC LECs TO DEFER IMPLEMENTATION OF DIALING PARITY

As AT&T showed in its petition, § 251(b)(3) of the Telecommunications Act of 1996 ("1996 Act") mandates that non-BOC LECs provide dialing parity to competing providers of local exchange service without delay.[2] As AT&T also showed, the Second Report and Order

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1 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996 ("Second Report and Order").

2 AT&T Petition, pp. 2-5; see also MCI, pp. 3-4 (All citations to parties' pleadings are to oppositions to petitions for reconsideration, unless otherwise indicated.).

expressly found that the technology required to offer full 2-PIC dialing parity "is widely available and well defined."[3] It is beyond cavil that dialing parity will be of vital importance to companies seeking to compete with incumbent LECs. There is simply nothing that can or does support the Commission's decision nonetheless to permit non-BOC LECs to refuse to offer dialing parity for up to three years from the effective date of the 1996 Act.

None of the three parties opposing reconsideration of this issue seriously disputes AT&T's reading of the statute, or the Commission's findings that there are no technical impediments that would warrant the deferral the Commission purports to authorize.[4] In essence, GTE, Sprint and the USTA argue that they would prefer not to abide by Congress' mandate to implement dialing parity immediately, because to do so would divert their energies from other projects.[5] Sprint threatens that if it is forced to offer dialing parity before the current deadline, it may "jeopardize" the number portability timetable ordered by the Commission; while GTE announces that it is "unlikely" that it will meet even the current dialing parity schedule.[6] These thinly-veiled (and in all events unsubstantiated) threats to refuse to comply with a shorter dialing

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3 Second Report and Order, ¶ 61.

4 See GTE, pp. 2-5; Sprint, pp. 2-4; USTA, pp. 8-10.

5 The USTA also argues that although Congress ordered the Commission to promulgate all regulations necessary to implement § 251 within six months of enactment of the 1996 Act, the Commission is not required to actually implement the law until it chooses to do so. USTA, p. 9. It is plain, however, that this novel theory -- which amounts to no more than the USTA urging the Commission to refuse to carry out the law -- must be rejected.

6 Sprint, p. 4; GTE, p. 2.

parity timetable simply do not constitute grounds to evade the requirements of § 251(b)(3). The 1996 Act requires non-BOC LECs to offer dialing parity without delay, and nothing in the record provides a reasoned basis to defer implementation.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO ALLOCATE ONLY ONE NXX CODE TO NEW ENTRANTS IN THE EVENT OF AN NPA OVERLAY

In imposing its one-NXX-per-NPA requirement for area code overlays, the Commission expressly recognized that availability of central office codes in the existing area code is crucial to fair competition, because the old NPA will be more "desirable" to customers than the overlay NPA.[7] However, as AT&T demonstrated in its petition, assigning a single NXX will permit CLECs to serve only one rate center in the more attractive, existing area code.[8]

No commenter denies that obtaining a single NXX will permit a wireline carrier to serve only one rate center in an NPA. Further, the Commission has previously found that in the event of an overlay, numbering resources in the existing area code are more valuable than those in the overlay NPA. The fact that an ILEC has already utilized so much of a critical numbering resource that not enough remains to allocate among its competitors cannot possibly justify "locking in" that ILEC's advantage by implementing an NPA overlay plan.

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7 See Second Report and Order, ¶¶ 286, 288. Despite the Commission's explicit findings, several commenters argue that the petitioners' contentions that NXX codes in an overlay NPA are less desirable than those in an existing area code are "unsubstantiated" or "undocumented." See, e.g., PageNet, p. 5; US West, p. 11. The burden is, of course, on these parties to demonstrate why the Commission should modify its prior conclusion.

8 AT&T Petition, pp. 5-7; see also TCG, pp. 6- 8; Cox, p. 3; AirTouch, pp. 8-9.

The sole parties to oppose AT&T's request that the Commission reconsider this aspect of the Second Report and Order are incumbent LECs -- the very parties who stand to gain by limiting their potential competitors' access to numbering resources in the existing NPA in the event of an overlay.[9] The ILECs' opposition to AT&T's proposal is intended to preserve this unwarranted and anticompetitive advantage. These commenters observe that in some NPAs which are nearing exhaust there will not be sufficient central office codes remaining to ensure that CLECs can obtain more than one NXX.[10] But the fact that NXXs in existing area codes are in great demand underscores the anticompetitive effects of providing ILECs near-exclusive rights to them. If there are not sufficient NXXs available to permit CLECs to compete on equal terms with incumbent LECs, then an overlay NPA relief plan will necessarily be anticompetitive.

III. THE COMMISSION'S REFUSAL TO REQUIRE PERMANENT NUMBER PORTABILITY AS A CONDITION FOR NPA OVERLAYS IS INCONSISTENT WITH ITS PRIOR RULINGS

The parties opposing the contention that permanent number portability must be a precondition to an NPA overlay fail to address the fundamental argument raised by AT&T's petition:[11] The Second Report and Order cannot be reconciled with the Commission's prior finding, in its Number Portability proceeding, that "[permanent] number portability is essential to

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9 See Ameritech, p. 5; GTE, pp. 11-12; BellSouth, p. 2; USTA, pp. 5-7; PacTel, p. 4.

10 Some ILECs go so far as to argue that the Commission should not require even that each CLEC be allocated a single NXX in the old NPA. See, e.g., Ameritech, p. 6; GTE, p. 12.

11 See SNET, pp. 9-10; PageNet, pp. 2-7; GTE, pp. 12-13; BANM, pp. 1-8; BellSouth, pp. 1-2; USTA, pp. 2-5; AirTouch, pp. 11-12; PacTel, pp. 2-3.

ensure meaningful competition in the provision of local exchange services," because interim portability measures may impair the quality and reliability of services offered by new entrants.[12] As AT&T stated in its petition, the Second Report and Order did not distinguish these prior findings or account for them in any fashion.[13]

The Commission has already found that permanent number portability is essential to meaningful local exchange competition. Permanent portability is even more important when an NPA overlay occurs. Even in the absence of an overlay, new entrants will be disadvantaged by interim portability because their customers will be forced either to give up their current telephone numbers, or to accept lower quality service. In an NPA overlay, new entrants will be forced to offer new telephone numbers almost exclusively in the undesirable new NPA, requiring their customers to change their area codes in addition to their phone numbers in order to avoid the adverse impacts of interim portability measures. Overlay plans thus place a significant and unwarranted incremental burden on CLECs seeking to enter local markets.[14]

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12 Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, released July 2, 1996, ¶¶ 28, 110.

13 AT&T Petition, p. 9.

14 Several commenters argue that AT&T's contentions have already been raised in this proceeding. See BANM, pp. 1, 4; BellSouth, pp. 1-2; PacTel, p. 2. While AT&T has previously contended that permanent number portability must be in place before implementation of any NPA overlay, it could not possibly have argued prior to its petition for reconsideration that the Second Report and Order does not adequately account for the Commission's earlier findings.

Two parties contend that because permanent portability will be implemented by the end of 1998 in the 100 largest MSAs, the harms to potential competitors will be limited.[15] It is plain, however, that forcing CLECs to accept inferior service quality as they first attempt to enter the local exchange market could cripple them -- indeed, quality of service is likely to be a primary focus of any customer that considers taking service from a CLEC. At a minimum, the Commission should require permanent number portability as a precondition to an NPA overlay in the 100 largest MSAs. Such a measure would at most postpone the availability of overlays through 1998 in those areas, and would be a crucial step in ensuring the development of local exchange competition.

IV. ILEC "NXX CODE OPENING FEES" MUST BE LIMITED TO COSTS THAT PROPERLY ARE ATTRIBUTABLE TO NUMBERING ADMINISTRATION FUNCTIONS

The majority of commenters that address the issue support AT&T's request that the Commission clarify the Second Report and Order's requirement that any fees ILECs charge for opening NXX codes must not be "unjust, discriminatory, or unreasonable."[16] As AT&T showed in its petition, NXX code opening charges currently vary widely from carrier to carrier, as do the types of expenses that ILECs attribute to code opening.[17]

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15 See BANM, p. 8; USTA, p. 3.

16 Second Report and Order, ¶ 333. See TCG, pp. 10-12; PageNet, p. 9; PCIA, pp. 7-8; AirTouch, pp. 12-14; see also US West, p. 9 (stating that US West "does not oppose" AT&T's position); BellSouth, p.3 (stating that BellSouth does not intend to charge code opening fees).

17 See AT&T Petition, p. 10.

The only commenters to oppose AT&T's proposal, PacTel and GTE, argue that they must be permitted to recover their "costs," but make no attempt to explain what those costs might reasonably entail.[18] GTE states only that it charges for its "administrative costs of adding new capacity,"[19] a characterization that adds nothing of substance to the analysis. PacTel likewise offers no information, but simply contends that its charges may not be limited to reasonable, forward-looking costs.[20] These parties' position appears to be that they may charge their competitors whatever they deem appropriate, without reference to uniform standards of any kind. The uncertainty surrounding ILECs' costs and charges for NXX code opening is made starkly apparent by BellSouth's decision not to charge such fees at all.[21] BellSouth's policy inevitably calls into question other ILECs' practices of charging as much as $30,000 per NXX.

In order to ensure that potential competitors have access to numbering resources at charges that truly reflect the reasonable costs of administering those resources, the Commission should clarify that any fees charged by an ILEC for NXX code opening must be limited to the forward-looking, economically efficient costs, if any, of numbering administration. As AT&T proposed in its petition, NXX code opening charges should reflect only those costs that would

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18 See GTE, pp. 15-16; PacTel, pp. 4-5.

19 GTE, p. 16.

20 PacTel, p. 5.

21 See BellSouth, p. 3

also be borne by a neutral third party acting as Numbering Administrator.[22] Such a standard would establish a "bright-line" rule to guide the Commission, state commissions, and competing carriers.

V. THE COMMISSION SHOULD CLARIFY THAT WIRELESS NUMBER TAKEBACKS WOULD DISPROPORTIONATELY BURDEN WIRELESS CUSTOMERS

Finally, those parties that address the issue unanimously support AT&T's request that the Commission clarify that state commissions may rely on voluntary wireless number "givebacks" and similar programs, but may not require wireless customers to switch their telephone numbers to the new NPA in the event of a geographic split.[23] The commenters agree that wireless takebacks are technologically unnecessary, and would disproportionately burden wireless customers, who would be required to return their telephones so that they could be reprogrammed with numbers in the new NPA.

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22 See AT&T Petition, p. 11. Contrary to PacTel's contention, AT&T's proposal does not impermissibly seek to base ILEC code opening fees on the cost structure of a hypothetical third party. AT&T proposes that ILECs be permitted to charge only for those elements that truly represent the costs of number administration, as opposed to costs arising from an ILEC's need to configure its own network so as to recognize a new NXX in order to route traffic to and from it. This latter category of expenses must be borne by every carrier that interconnects with the LEC to whom the new NXX is assigned (as well as by PBX operators, who must reprogram their equipment to recognize the new NXX). Accordingly, it would be inappropriate to permit an ILEC to charge another carrier for these costs, as they would represent nothing more than a fee for the "privilege" of competing against the ILEC.

23 See AT&T Petition, pp. 12-14; PageNet, pp. 1-2; PCIA, pp. 2-4; US West, pp. 13-15; Arch, p. 3; AirTouch, pp. 2-3; see also SBC Petition for Reconsideration, pp. 20-27 (advocating use of voluntary wireless number "givebacks").

The Commission recently sought comments on a petition for declaratory ruling filed by the Massachusetts Department of Public Utilities seeking to clarify whether wireless customers could retain their telephone numbers in the event of area code splits in two NPAs in that state.[24] AT&T urges the Commission to clarify, either in that proceeding or as part of its disposition of the instant petitions for reconsideration, that when an NPA is subject to a geographic split, wireless customers may not be required to change their telephone numbers to the new area code. Alternatively, at a minimum the Commission should make clear that, because of the critical distinctions between wireless and wireline technology and the disproportionate burdens imposed on wireless customers by wireless takebacks, it would not be inequitable for a state commission to permit wireless customers to keep their telephone numbers in the event of an NPA split.

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[24] See Public Notice, Massachusetts Department of Public Utilities Petition for Declaratory Ruling Regarding Area Code Relief Plan For Area Codes 508 and 617, DA 96-1758, NSD File No. 96-15, released Oct. 23, 1996.

CONCLUSION

For the reasons stated above and in AT&T's petition, the Commission should reconsider and clarify its Second Report and Order in CC Docket No. 96-98.

Respectfully submitted,

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December 2, 1996

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CC Docket No. 96-98

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Cox Communications, Inc. ("Cox")
GTE Service Corporation ("GTE")
MCI Telecommunications Corporation ("MCI")
MFS Communications Company, Inc.
National Cable Television Association, Inc.
Pacific Gas and Electric Company
Pacific Telesis Group ("PacTel")
Paging Network, Inc. ("PageNet")
Pennsylvania Public Utility Commission
Personal Communications Industry Association ("PCIA")
SBC Communications, Inc. ("SBC")
The Southern New England Telephone Company ("SNET")
Sprint Corporation ("Sprint")
Telco Planning, Inc.
The Telecommunications Resellers Association
Teleport Communications Group, Inc. ("TCG")
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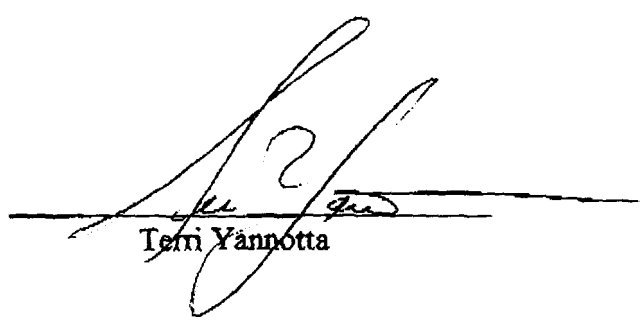
CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 2nd day of December, 1996, a copy of the foregoing "AT&T Corp.'s Reply to Oppositions to Petition For Limited Reconsideration and Clarification" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



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